

# THE LEGAL POSITION OF WORKERS AS PREFERRED CREDITORS WHO BECOME THE APPLICANT FOR BANKRUPTCY AGAINST THE COMPANY

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## Abstract

Property of a bankrupt debtor in public confiscation status. Bankruptcy arises because there will be a seizure of insolvency property, which is usually the debtor's property is insufficient to be distributed to the creditors. In bankruptcy, arrangements are also regulated as to the order of creditors or which creditor priority precedes the payment. In the case of bankruptcy, the order of creditors who prioritized payments in bankruptcy is Creditor Preference. The research method used is normative juridical research with a statutory approach and comparison of rulings in which the author analyzes the position of workers as Preferential Creditors who apply for bankruptcy and have Legal Standing as an insolvency applicant to companies, both private and state-owned companies. Workers have a privileged position, and their right comes first if the company is insolvent Workers' wage payments take precedence overpayments from other creditors and have a privileged position. Insolvency applications submitted by workers must go through the

Industrial Relations court first and then apply for bankruptcy either to the Commercial Court or the Minister of Finance because in the case study of this research that the right to oversize the company is the minister of finance.

**Keywords:** the legal position, workers, preferred creditor, bankruptcy.

## Introduction

Bankruptcy is a condition of a debtor after a decision by the judge of the Commercial Court to take general confiscation of all the debtor's assets or known as a Public Attachment.<sup>1</sup> Bankruptcy regulations are made and issued because, in bankruptcy, there will be seizure of bankruptcy assets if the debtors' assets are insufficient to be distributed to creditors. Therefore, in the regulation regarding bankruptcy, the order of creditors or credit priority can be prioritized for payment.<sup>2</sup> The bankruptcy institution itself is a legal institution that has an important function, as the realization of two important articles in the Civil Code, namely Article 1131 and Article 1132, regarding the debtor's responsibility for his debts. These two articles assure creditors that the debtor's obligations will still be fulfilled/paid off with a guarantee from the debtor's assets, both existing and existing, in the future. Articles 1131 and 1132 of the Civil Code are a manifestation of the principle of guaranteeing payment certainty for transactions that have been made.

Whereas the debtor's assets are regulated in Article 1131 and Article 1132 of the Civil Code, which states that all creditors share guarantees proportionally, except for creditors with precedence rights (preference rights).<sup>3</sup> The principle stated in Article 1131 and Article 1132 of the Civil Code is that the law regulates the right to collect creditors or creditors for transactions with debtors. In Bankruptcy, Concurrent Creditors, Separatist Creditors, and

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<sup>1</sup> Ricardo Simanjuntak, 2008, "*UU Kepailitan Versus Hak-Hak Buruh*", bisa diakses di: <http://www.hukumonline.com>, diakses pada tanggal 30 september 2020 pukul 20.42 wib

<sup>2</sup> Sutan Remy Sjahdeini, 2008, *Hukum Kepailitan-Memahami Undang-undang Nomor 37 Tahun 2004 tentang Kepailitan*, Grafiti, h.22

<sup>3</sup> Rahayu Hartini, 2007, *Hukum Kepailitan*, Malang:UMM Press, h.14

Preferred Creditors have different rights positions. In applying for bankruptcy, Preferred Creditors and Separatist Creditors do not lose their property rights and do not lose their priorities, while the Concurrent Creditors have their position in the distribution of the final bankruptcy assets because they do not have the guarantee or privileges granted by law. In the case of bankruptcy, the order of Creditors whose payment is prioritized in bankruptcy is Preferred Creditors.<sup>4</sup> Bankruptcy has the objective of distributing the debtor's assets from the bankruptcy estate (bankruptcy) to be distributed to creditors fairly and preventing the debtor because he will commit actions that will harm or reduce the bankruptcy fee because it will harm his creditors. Bankruptcy protects debtors who have good faith in their creditors, namely by obtaining debt relief. The debtor is a company that employs workers/laborers in the company or can be referred to as preferred creditors because workers/laborers' wages are a special account in bankruptcy.

*"If a company is bankrupt, labor wages mean debt that takes precedence overpayment. Thus, workers/laborers have privileges and have the right to apply for bankruptcy to the company if their rights are not fulfilled. A Labor Union is an organization whose members are workers/laborers inside and outside the company." (Article 95 paragraph (4) of Law Number 13 the year 2003 concerning Manpower)*

Disputes over rights are concurrently related to unfulfilled normative rights, their implementation is not fulfilled, or they are not similar to those stipulated in work agreements, work agreements along with company regulations, and manpower laws and regulations. Workers can sue normative rights to the Industrial Relations Court if it is too late or not appropriate. Termination of employment includes normative rights for workers that arise after the decision of the Industrial Relations Court, which is legally binding, includes severance pay, period of service pay, compensation for rights, as well as processing wages that are not paid by employers or employers. Labor normative rights must wait for the decision of the Industrial Relations Court (PHI) first, namely in terms of termination of employment (PHK) and if there is no agreement or peace between the worker and the employer, including the right to severance pay, period of service pay, compensation for rights, as well

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<sup>4</sup> Rahayu Hartini, *Ibid*, h.14-16

as processing wages that are not paid by employers.<sup>5</sup>

Case study of workers as preferred creditors filing a bankruptcy filing against the company. This dispute occurred between 2 (two) workers filing a lawsuit against PT. Merpati Nusantara Airlines, the obligations that are billed through bankruptcy are the workers' wages/ basic salaries of workers that have been late to be paid from December 2013 to July 2014. the panel of judges rejected the application for bankruptcy at the Commercial Court because the obligations collected by these workers were the basic wages that were not paid because according to PT. Merpati Nusantara Airlines, the two workers, do not have the position to file for bankruptcy (Legal standing).

## Method

In this study, the author uses a descriptive normative juridical legal research type, namely written legal research studied from various aspects such as theory, philosophy, comparison, structure/composition, consistency, general explanations, and explanations contained in each article formality, and binding strength. laws, and the language used is the language of the law. So, it can be concluded that normative legal research has a broad scope. Research in legal science is divided into two, namely normative legal research and empirical legal research. The research used by the author is a normative legal research method.

Normative legal research methods are methods or methods used in legal research that is carried out by examining existing library materials.<sup>6</sup> his type of research will be prepared based on applicable laws and regulations as well as draft laws and relevant regulations. In addition, this study uses Legal Certainty Theory as an approach to connect with research topics that will examine workers' legal status as preferred creditors who are applicants for bankruptcy against the Company.

The approaches used from several approaches are the statute approach and the comparative approach. A statutory approach is an

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<sup>5</sup> Jurist-Diction Vol. 3 (3) 2020 976 Farlina Dwi: *Keabsahan Permohonan Pailit pailit*, h.972

<sup>6</sup> Soerjono Soekanto dan Sri Mamudji, 2009, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cetakan ke-11, Jakarta: PT Raja Grafindo Persada, h.13-14

approach that is carried out by examining all laws and regulations related to the decisions used in research. The comparative approach is by making comparisons with decisions relating to the legal position of preferred creditors, which have become court decisions with permanent legal force.

In normative legal research, only library material or secondary data is examined, which includes:

- a. Primary legal materials are primary legal materials used, consisting of statutory regulations, official records, minutes in the making of legislation, and judges' decisions. The primary legal materials used by the author are:<sup>7</sup>
  1. The 1945 Constitution of the Republic of Indonesia
  2. Civil Code (KUHPPerdata)
  3. Law Number 13 of 2003 concerning Manpower,
  4. Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes,
  5. Law Number 37 of 2004 concerning Bankruptcy and Postponement of DebtPayment Obligations,
  6. Decision of the Constitutional Court based on Number 67 / PUU-XI / 2013, and
  7. Decision of the Commercial Court based on Number 04 / Pdt.Sus-Pailit / 2016 / PN.Niaga.Jkt.Pst.

**The status of Workers / Laborers can be categorized as creditors and can file bankruptcy applications from the perspective of labor law and bankruptcy law.**

Article 1133 of the Civil Code states that the right to precedence among debtors is issued from special rights, from pawns and from mortgages, based on Article 1134 of the Civil Code that: *"Privileges are rights granted by law to another creditor, solely based on the nature of the receivables. Pawns and mortgages are higher than privileges, except in the case where the law expressly determines the opposite."*<sup>8</sup>

Article 1133 paragraph (1) of the Civil Code has several

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<sup>7</sup> *Ibid*, h.141

<sup>8</sup>[https://id.wikipedia.org/wiki/Pengadilan\\_Hubungan\\_Industrial](https://id.wikipedia.org/wiki/Pengadilan_Hubungan_Industrial) diakses pada tanggal 29 desember 2020 pada pukul 10.59 malam

juridical substances contained in Article 1133 paragraph (1) of the Civil Code as follows:

- a. Regulates 2 (two) types of receivables or creditors, namely, creditors who have the privilege of paying priority, known as preferred creditors and separatist creditors.
- b. Regulate about receivables that have the right to prioritize payment, there are 2 (two), namely receivables that are issued because the type of bill is privileged by law and receivables whose payment is prioritized which are issued from material rights such as liens or mortgages (mortgages) based on the agreement.

The definition of the privileges of preferred creditors is regulated in Article 1134 paragraph (1) of the Civil Code, which is a right which is given by law to a debtor so that the level is higher than other debtors, solely based on the nature of the debt. Article 1134 paragraph (1) of the Civil Code is that preferred creditors have a higher position than other creditors because the law itself provides the preferential treatment. What is meant by other creditors is concurrent creditors, including separatist creditors, because even though Article 1134 paragraph (2) of the Civil Code states that the position of a separatist creditor is higher than that of a concurrent creditor, this elevation only applies as long as it is not excluded by law. If the law excludes this, then claims from preferred creditors are privileged to take precedence overpayments from separatist creditors.

Article 60 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which prioritizes the procedure for paying a debt to preferred creditors, places preferred creditors higher than separatist creditors. In the elucidation chapter of Article 60 paragraph (2), it is explained that what is meant by "privileged creditors" are creditors holding rights as referred to in Article 1139 and Article 1149 of the Civil Code. In principle, Article 1138 of the Civil Code divides the privileges of preferred creditors into 2 (two) categories, namely special privileges as special privileges to prioritize payment for the sale of certain objects. The two general privileges as the right to precedence payment of movable and immovable objects based on their sequence. These special and general privileges have their own levels to precede payment based on the principle of "special

privileges precedes general privileges."

The articles in the Civil Code, as written, regulate the priority order of creditors. Suppose it is not determined that a receivable is a privilege having a higher status than a receivable secured by a security right (lien, fiduciary, or mortgage). In that case, the creditor order is as follows:

- a. Creditors who have receivables secured by Security Rights
- b. Creditors with Privileges
- c. Concurrent Creditors

Meanwhile, if a special right is determined to be repaid in advance of the other creditors, including creditors holding guarantee rights, the order of the creditors is as follows:

- a. Privileged creditors
- b. Creditors who have receivables secured by security rights
- c. Concurrent creditors

Among the concurrent creditors, they have the same position and are entitled to obtain the proceeds from the sale of the debtor's assets, both existing and future ones. This distribution after previously deducting the obligation to pay receivables to creditors who hold Security Rights and creditors with special privileges proportionally. According to the ratio of the number of receivables of each of the concurrent creditors is divided in terms of pro-rata share.

Postponement of debt payment obligations only applies to concurrent creditors, in Articles 244 and 246 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, that postponement of debt payment obligations applies to creditors who hold Collateral Rights and creditors with stimulant rights. Article 244 of Law Number 37 the year 2004 concerning Bankruptcy regulates the position of creditors' claims guaranteed by security rights (lien, fiduciary, mortgage, and mortgage) and privileged claims. According to Article 244 paragraph (1) of Law Number 37 the year 2003 concerning Bankruptcy and Postponement of Debt Payment Obligations with due observance of the provisions of Article 246 Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it does not apply to:

- a. Claims secured by a pledge, fiduciary security, mortgage, or other collateral rights on other terms.



- b. Bills for maintenance, supervision, or education have to be paid, and the supervisory judge must determine the amount of bills that are already there and have not been paid before the postponement of debt payment obligations that do not invoice with privileges.
- c. Preferred claims against certain assets belonging to the debtor as well as against all assets of the debtor that are not covered in paragraph (1) letter b.

Therefore, parity creditors are creditors who have unsecured and privileged claims or are called concurrent creditors, i.e., they share in the number of properties available to them. Creditors will only receive a payment if any remaining proceeds from the bankruptcy estate have been sold, after all, secured creditors and privileged creditors have received payment. Based on the level, creditors have 3 types, namely:

- a. Separatist creditors or creditors who have very special rights, namely the mortgage rights holder I, who have made a promise to sell on their power and the lien holder (Articles 55 and 56 of Law Number 37 the year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations), as well as any influence. As the holder of the material guarantee, this separatist creditor has the right to pay off the debtor's debts first by selling the guaranteed object to the creditor. This means that they can still exercise their rights as if there is no bankruptcy.
- b. Creditors with special privileges, namely other mortgage holders and fiduciary holders, creditors who have privileges or special rights. This group of creditors has the right to pay priority over other creditors solely based on the nature of the receivables. This privileged receivable can be about all certain objects, or it can be about all movable and immovable objects in general.
- c. Concurrent creditors, namely ordinary creditors, whose receivables are not guaranteed. These creditors are competing, namely creditors/collectors other than those mentioned. They will receive their respective after the creditors mentioned above have received payment. In principle, these creditors are the same (*Paritas creditorum*). However, this principle recognizes exceptions, namely the creditors whose rights take precedence under Law Number 37



of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

Based on their level, or can be called the level of bankruptcy creditors, the three types of creditors are different from the types or types of creditors in bankruptcy. The types or types of bankruptcy creditors are related to the curator's inventory of creditors' receivables which will be discussed in the accounts receivable matching meeting. The types of creditors are:

- a. Recognized creditors who will then be included in the list of recognized receivables
- b. Creditors that are temporarily recognized, which will then be included in the list of contested receivables.

Workers / Laborers are one of the parties in the bankruptcy that befell a company. The bill for payment of labor wages is categorized as a general privilege in Article 1149 of the Civil Code and Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower so that the payment must take precedence. However, in practice, the position of workers in bankruptcy is very weak. This happens because Law Number 37 of 2004, the Civil Code, and the Tax Law place state bills, and the holders of property security rights are higher in position than workers' wages.

*"The Constitutional Court, through Decision Number 67/PUU-XI/2013 concerning manpower, decides that the wages of workers/laborers who are owed take precedence over all types of creditors, including invoices from separatist creditors, claims for state rights, auction offices, and public bodies formed by the government. Meanwhile, the payment of other workers/laborers' rights takes precedence over all claims made by the government, except for claims from separatist creditors."*

The decision of the Constitutional Court is the answer to the petition submitted by the employees of PT. Pertamina (in its position as a citizen) in 2013. This Constitutional Court decision places the position of workers' wages owed as precedence for payment of other creditors' bills, including separatist creditors' claims and state rights claims (tax debt), and for other rights of workers. paid in advance of other creditors, including claims for state rights but after payment of claims by separatist creditors. Central Jakarta Commercial Court Number: 04 / Pdt.Sus-Pailit / 2016 / PN.Niaga.Jkt.Pst that workers

who apply for bankruptcy have legal standing and have the right to file a bankruptcy application. Workers can be called preferred creditors because workers do not get their rights, namely in the form of wages that should be paid by employers. In the case of bankruptcy, the employer does not pay workers' wages and unilaterally terminates 114 workers.

PT. Merpati Nusantara Airlines, which is a company whose shares are owned by a State-Owned Enterprise (BUMN) and a business engaged in public transportation, feels that its former employee who submitted this pilot application does not have a legal position or legal standing because it should be in filing a bankruptcy application after passing through The Industrial Relations Court process then submits a bankruptcy application to the Minister of Finance because bankruptcy involving a company whose shares are owned by a State-Owned Enterprise can be bankrupt by the Minister of finance or now called the Financial Services Authority because of its authority to bankrupt the company.

### **Legal remedies if the Worker / Laborer files for bankruptcy against the company without going through the Industrial Relations Court**

The Industrial Relations Court (PHI), based on Article 1 number 17 Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, is *"A special court established within the district court which has the authority to examine, hear and give decisions on industrial relations disputes. The Industrial Relations Court is located at every Regency / City District Court located in each Provincial Capital, whose jurisdiction covers the province concerned. Especially in regencies/cities densely industrialized, the Industrial Relations Court is established by a Presidential Decree at the local District Court."*

#### **a. Duties and Authorities of the IRC**

PHI has limited authority over industrial relations disputes as stated in Article 56 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, namely the duty and authority to examine and decide:

- 1) At the first level regarding disputes over rights;
- 2) At the first and last level regarding disputes over interests;
- 3) At the first level regarding disputes over the termination of

employment;

- 4) At the first and last level regarding disputes between trade unions/labor unions within one company.

According to Article 1 numbers 2-5 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, Disputes that can be resolved in PHI:

- 1) Rights disputes are disputes arising from non-fulfillment of rights due to differences in the implementation or interpretation of statutory provisions, work agreements, company regulations, or collective labor agreements;
- 2) Disputes of interest are disputes that arise in work relations due to non-conformity of opinion regarding the making and/or changes in the working conditions stipulated in the work agreement, or company regulations, or collective working agreement;
- 3) Disputes over the termination of employment are disputes that arise because there is no conformity of opinion regarding the termination of employment relations carried out by one of the parties;
- 4) Disputes between trade unions/labor unions are disputes between trade unions/labor unions and other trade unions/labor unions in only one company because there is no concurrent understanding of membership, the exercise of rights and obligations of trade unions;

The Industrial Relations Court on crucial issues that workers often face. The categories of problems often experienced by workers are:

- 1) Regarding a certain time work agreement such as an indefinite time work agreement
- 2) About the illegal strike
- 3) Regarding the wages given to workers when carrying out the process of termination of employment (process wages)
- 4) Termination of employment for reasons of efficiency
- 5) Regarding termination of employment due to serious errors
- 6) Regarding the protection of women's rights
- 7) The right to organize and suspicion of annihilation of labor unions (Unionbusting)

Legislation relating to labor issues. Among them are Law

Number 13 of 2003 concerning Manpower, Law Number 21 of 2000 concerning the Settlement of Industrial Relations Disputes. These regulations are used as a reference or basis for judges in giving considerations related to facts at trial. The package of regulations in the labor sector also supports the process of enforcing industrial relations disputes to assess whether the parties' actions are in accordance with the regulations therein. Apart from the three packages of laws and regulations, the Constitutional Court decisions are also a source of law to evaluate.

Applications for filing for bankruptcy through the Industrial Relations Court are carried out with workers to examine and resolve industrial problems between workers and employers. This is done first to solve the problems of workers in the industrial relations sector. After the Industrial Relations Court decision regarding the application for workers is issued, the workers can then submit a bankruptcy application against the company to the Commercial Court. There are no legal remedies that can be resolved without going through a court, especially in worker/labor disputes. It is written in the law that the court has the authority to examine and decide. The court has the authority to examine and decide cases but only adjust the cases and applications submitted in court. Especially legal efforts involving workers/laborers who are very closely related to solving problems first at the Industrial Relations Court.

Industrial relations are the linkages of interests between workers/laborers and entrepreneurs, potentially causing differences of opinion and even disputes between the two parties. In the era of industrialization, industrial relations disputes have become more and more complex, so that fast, precise, fair, and inexpensive industrial relations dispute resolution institutions and mechanisms are needed, which so far cannot be realized by the existing laws and regulations. Simple, fast, and low-cost industrial relations dispute settlement was born from the idea of implementing social justice in handling industrial relations disputes involving two disputing parties, namely the entrepreneur and the worker/laborer. Both are in an unequal position, employers are in a strong position in socio-economic status while workers/laborers are in a weak position, who depend on their sources of income to work for entrepreneurs or employers. Both are human beings who have the dignity and dignity

of humanity (human dignity).<sup>9</sup>

Manpower Law is a working relationship that originates from a work agreement between a worker and an employer. Labor law provisions must be able to integrate and coordinate the interests contained therein and the procedural law for the settlement of industrial relations disputes. The need to create regulations in the field of manpower is an urgent need that is felt by the economic, social, and political environment. Therefore, establishing a legal framework for the development of industrial relations that is just, effective, and capable of assisting the settlement of industrial disputes is a task that must be carried out as well as possible.<sup>10</sup>

In connection with legal certainty and justice principles, Gustav Radburg stated that there are 3 (three) basic values of law, namely legal certainty, legal benefit, and legal justice. Society not only needs regulations that guarantee legal certainty in their relationship with each other but also need justice, besides that the law is required to serve its interests (provide benefits).<sup>111</sup> Likewise, the procedural law for the settlement of industrial relations disputes is stated in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes.

Industrial Relations then went to the Commercial Court. Suppose the worker applies for bankruptcy in advance to Commercial court without going through the Industrial Relations Court. In that case, the application for filing for bankruptcy to the company will be rejected. Due to bankruptcy cases and industrial disputes, Concerning workers must be resolved through a court to court. This can be seen from the verdict of the court industrial relations. In the case of this research position, that Worker's position as preferred creditor cannot be declared bankrupt by the company if

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<sup>9</sup> Christina NM Tobing, 2018, *Menggagas Pengadilan Hubungan Industrial dalam Bingkai *Ius Constituendum* sebagai Upaya Perwujudan Kepastian Hukum dan Keadilan*, Jurnal Fakultas Hukum Universitas Pelita Harapan Medan, h.4-5

<sup>10</sup> Alan J. Boulton, 2002, *Struktur Hubungan Industrial di Indonesia Masa Mendatang*, Jakarta: Kantor Perburuhan Internasional, h.10

<sup>11</sup> Teguh Prasetyo dan Abdul Halim Barkatullah, 2014, *Filsafat, Teori dan Ilmu Hukum, Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*, Jakarta : PT. RajaGrafindo Persada, h.15-16

it does not apply for bankruptcy to the Minister of Finance / OJK, which is the authority and sadness The Minister of Finance and OJK are the bridges that will be representing bankruptcy filers to the Commercial Court.

### **Conclusion**

1. The position of preferred creditors has legal standing in filing for bankruptcy against companies, both private and state-owned. Workers have the right to be given equal protection and position. The court must provide protection and legal certainty for workers about bankruptcy applications filed by workers. Preferred creditors consisting of workers have special privileges that must take precedence overpayments to other creditors in a case of bankruptcy, and the company is responsible and must pay workers' wages for unilateral layoffs committed by the company against workers. If the employer does not grant the rights of the Preferred Creditors, the workers can apply for bankruptcy.
2. Legal Remedies for workers when filing a bankruptcy application against the company in the event of a dispute, the settlement that must be made first must be through the Industrial Relations Court, because disputes involving workers must be resolved first through the Industrial Relations Court, in the case study of bankruptcy research, after the Court Decision Industrial Relations can then apply for bankruptcy to the company through the Commercial Court. In case study Number 04/ Pdt.Sus-Pailit/2016/PN.Niaga.Jkt.Pst, the one who has the right to bankrupt a BUMN company must be the Minister of Finance, and in this case, the process of the stages is carried out not through the Commercial Court but at the Minister of Finance. In the case of bankruptcy, if the debtor is an insurance company or a company whose shares belong to the state, the Minister of Finance is entitled to bankruptcy. So, after obtaining the decision of the Industrial Relations Court, the worker should then file a bankruptcy application through the Minister of Finance. So, there are no cases of worker disputes without going through the court because the judge's decision at the Court is final and binding and can bind the parties, both workers and employers. Disputes that are resolved through courts provide protection and legal certainty to the parties.

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